

## **The Homeownership Preservation and Protection Act**

### **I. Expand the Homeownership and Equity Protection Act (HOEPA) to cover more loans.**

The protections of HOEPA are helpful, but lenders and brokers have learned to avoid HOEPA by offering loans with rates and fees just below the trigger points. For example, many lenders will charge 7.99% in points instead of 8%. The bill will expand the number of high-cost loans covered by HOEPA by tightening the triggers in current law, and making those triggers more comprehensive. For instance, currently yield-spread premiums (YSPs) are not included in calculating whether a loan triggers HOEPA protections. The legislation would include YSPs in calculating whether a loan is a HOEPA loan.

### **II. Expand the Protections for HOEPA (“high cost”) Loans**

The legislation will strictly limit financing of points and fees for high cost loans. The legislation will prohibit all balloon payments for high cost loans. The legislation will prohibit all prepayment penalties and yield spread premiums for high cost mortgages.

### **III. Improve Protections for *All* Borrowers, not just subprime borrowers.**

Create a duty of good faith and fair dealing for lenders and brokers.

The bill will supplement state law regarding broker duties by clarifying the fiduciary duty of mortgage brokers towards the borrowers. In addition, the bill will similarly supplement existing lender liability for broker actions by requiring that where brokers are paid by the lenders through yield spread premiums, the lender would be liable for the brokers’ actions.

Prohibit steering. Neither a broker nor a lender would be allowed to steer a borrower to a more costly loan. For example, if a borrower qualifies for a prime loan, a broker or lender could not give them a subprime loan.

### **IV. Create a new set of protections for subprime loans that do not meet the HOEPA threshold, but are more costly than prime loans. This will be similar to the definition used by the Federal Reserve for Home Mortgage Act Disclosure (HMDA) data collection.**

These protections include:

- \* no prepayment penalties;
- \* no yield-spread premiums;
- \* no steering to higher cost or lower quality mortgages;
- \* requires escrows for taxes and insurance;
- \* requires an analysis of the borrower’s ability to repay the mortgage even after rate reset;
- \* requires documentation of income, except in unusual circumstances.

## V. Require good faith and fair dealing in appraisals.

Prohibit pressure from being brought to bear on appraisers.

Hold lenders liable for appraisals to avoid the appraisal problems created in the current climate.

## VI. Require good faith and fair dealing in home loan servicing.

A neglected part of the subprime story is the abuses brought to light by the Fairbanks case several years ago. Mortgage servicing abuses are adding to rising defaults and foreclosures in the subprime market. Abuses include misapplication of payments; failure to credit payments in a timely fashion, thereby generating late fees; and improperly force-placing insurance at great cost to the homeowner. The legislation will:

- \* require prompt crediting of payments;
- \* limit the amount and timing of any fees a servicer or lender may charge other than interest and late fees;
- \* require that any fees charged must be reasonable and for services actually provided, if allowed by the mortgage contract;
- \* limit the amount of late fees a servicer may charge;
- \* require that all payments go first to current amounts due before going to cover delinquencies;
- \* limit the circumstances in which servicers can force-place insurance for the borrower.

## VII. Foreclosure Prevention Counseling

Authorize appropriations to fund foreclosure prevention counseling, consistent with the Homeownership Preservation Summit Principles. This means funding organizations with the capacity to work with servicers and lenders to reach out to borrowers prior to loan resets and to help modify loans for long-term affordability.

## VIII. Give the FDIC and OCC rulemaking authority under the unfair or deceptive acts or practices (UDAP) provision of the FTC Act.

Currently, only the Federal Reserve may issue a regulation establishing a UDAP standard for banks. The Office of Thrift Supervision has the authority to do this for thrifts, and has indicated its intention of doing so. The Federal Reserve declined to join the effort. This provision would give other banking regulators the same authority. These regulators have requested this authority, and have indicated that they are willing to act.